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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061215
Party	Defendant PIANO FACTORY GROUP
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Submission	Other Motions/Papers
Filer's Name	Adam R. Stephenson
Filer's e-mail	adam@patentproblempro.com, janice@patentproblempro.com
Signature	/Adam Stephenson/
Date	06/16/2015
Attachments	FiledReplyMotiontoPetMotiontoStrike.pdf(29371 bytes) Exhibit1filed.pdf(4670499 bytes) Exhibit2.PDF(234299 bytes) Exhibit3.PDF(197852 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Schiedmayer Celesta GmbH, Cancellation No.: 92/061,215

Petitioner, Reg. No. 3,340,759

v. Mark: SCHIEDMAYER

Piano Factory Group, Inc. Registration Date: November 20, 2007

Respondent.

RESPONDENT'S REPLY TO PETITIONER'S MOTION TO STRIKE ANSWER AND FOR DEFAULT JUDGMENT

Respondent Piano Factory Group, Inc. ("Respondent") hereby submits its reply to Petitioner's Schiedmayer Celesta GmbH ("Petitioner") Motion to Strike Respondent's Answer to Petition and for Default Judgment.

FACTS

Petitioner manufactures celesta and glockenspiel instruments as set forth in the copies of what is believed to be Petitioner's website included as Exhibit 1 to this Reply.

As set forth in Exhibit 1, p. 9, "the Celesta action is completely distinct from an upright-piano action (hammers strike the vertically aligned strings from the side) or a grand-piano action (hammers strike the horizontally aligned strings from below)."

As set forth in Exhibit 1, p. 10 "There are keyboard glockenspiels made by other manufacturers using a piano action (sound plates are struck vertically/from the side) or a grand-piano action (sound plates are struck from below). So it is very misleading to call

these instruments a celesta which unfortunately happens. Schiedmayer does use a full-size grand-piano keyboard but not a grand-piano action."

As set forth in Exhibit 2, the American Heritage Dictionary defines "piano" as "[a] musical instrument with a manual keyboard actuating hammers that strike wire strings, producing sounds that may be softened or sustained by means of pedals."

Exhibit 3 contains the American Heritage Dictionary definition of "celesta" as "[a] musical instrument with a keyboard and metal plates struck by hammers that produce bell-like tones."

Respondent, Piano Factory Group, Inc., does manufacture pianos under the SCHIEDMAYER trademark and sell them to consumers.

As set forth in the Board's Scheduling Order mailed April 7, 2015, Respondent's Answer was due May 17, 2015. Respondent filed its answer on May 29, 2015, which was on the 12th day following the due date. The undersigned was retained by Respondent as counsel for this matter on the 27th of May. The Answer was filed two days later.

ARGUMENT

At the outset, the Respondent notes that "[g]ood cause for discharging a default is generally found if (1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense." [Jeffery A. Handelman, *Guide to TTAB Practice* § 14.14 (2015) citing *DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d 1222, 1223 (TTAB 2001)].

In the present case, it is evident that the Respondent was not willfully refusing to prosecute the present matter or grossly neglecting its responsibilities as Respondent was

working to secure counsel for this proceeding, which occurred on May 27th. Since the answer was filed just two days later it is evident that prompt action was taken following the hiring of counsel. Accordingly, since the delay involved the hiring of counsel for this matter, and the undersigned filed the answer promptly following being retained, these facts establish good cause for the Board to excuse the delay in filing the answer.

Petitioner's motion wholly fails to adduce any facts that would prove, much less suggest, that it was prejudiced in any way by the delay in filing the answer. Petitioner's indignation at the alleged impropriety of such a late filing is not an injury of the kind that can remotely be considered "substantial prejudice."

Respondent has many very meritorious defenses to the cancellation, as set forth in the Answer and in the following discussion. Respondent was very surprised to receive the Petition, as Petitioner does not make pianos. As set forth in Exhibit 2, a piano, or piano-forte, is "[a] musical instrument with a manual keyboard actuating hammers that strike wire strings, producing sounds that may be softened or sustained by means of pedals." This definition indicates that pianos to the purchasing public, are percussion instruments that use keys to move hammers to strike strings to produce the distinctive piano sound. In contrast, a celesta, as set forth in Exhibit 3 is "[a] musical instrument with a keyboard and metal plates struck by hammers that produce bell-like tones." A celesta, when played with hammers striking plates, sounds like a set of bells being rung in order. A celesta is used to play the bell-like tones during Tchaikovsky's "Dance of the Sugar Plum Fairy" from *The Nutcracker*. Because of the bell-like sound of the celesta, no consumer would confuse a piano with a celesta (or a glockenspiel for that matter).

Herein lies Petitioner's major issue with its petition and one of the many grounds supporting Respondent's defenses: Petitioner does not make pianos at all. Exhibit 1 consists of pages from what Respondent believes is Petitioner's website in English which show examples of the celestas and glockenspiels made by Petitioner. Petitioner's website is very careful to teach the purchasing public the difference between a piano (instrument that strikes strings) and the celesta (instrument that strikes metal plates):

Exhibit 1, p. 9, "the Celesta action is completely distinct from an upright-piano action (hammers strike the vertically aligned strings from the side) or a grand-piano action (hammers strike the horizontally aligned strings from below)."

Exhibit 1, p. 10 "There are keyboard glockenspiels made by other manufacturers using a piano action (sound plates are struck vertically/from the side) or a grand-piano action (sound plates are struck from below). So it is very misleading to call these instruments a celesta which unfortunately happens. Schiedmayer does use a full-size grand-piano keyboard but not a grand-piano action."

Given the above, it is evident that Petitioner knows perfectly well that it does not make pianos (piano-fortes) and that it makes only celestas and glockenspiels. Viewed in the most charitable light possible, Petitioner's repeated assertions in the Petition and in its motion to the Board that it manufactures a "Celesta piano" are simply incredibly misleading and disingenuous.

Respondent, then, clearly has meritorious defenses to raise, and, by filing the answer, has indicated its desire to go forward with this proceeding.

Accordingly, Petitioner's motion fails to establish a factual basis sufficient to support the striking of the answer. Respondent has shown the delay in filing the Answer

was due to willful conduct or gross neglect, no substantial prejudice has resulted to Petitioner, and Respondent has numerous meritorious defenses, including that Petitioner does not appear to make pianos at all.

Recognizing that "the law strongly favors determination of cases on their merits" (*DeLorme*, at 1223), the Respondent respectfully requests that Petitioner's Motion to Strike and for Default Judgment be denied.

Dated: June 16, 2015 Respectfully submitted,

/s/ Adam R. Stephenson Adam R. Stephenson, LTD. 40 W. Baseline Rd., Ste 101

Tempe, AZ 85283 Tel: 480.264.6075 Fax: 480.718.8336

Email: adam@patentproblempro.com Attorney for Respondent, Piano Factory

Group, Inc.

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CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing RESPONDENT'S

RESPONDENT'S REPLY TO PETITIONER'S MOTION TO STRIKE ANSWER AND

FOR DEFAULT JUDGMENT is being sent via U.S. Mail to Petitioner Schiedmayer

Celesta GmbH's attorney of record as follows:

Michael J. Striker

Striker, Striker & Stenby

103 East Neck Road

Huntington, NY 11743

Dated: June 16, 2015

The only Celesta manufacturer worldwide



Deutsch English search

Celesta manufactory since 1890

CELESTA

GLOCKENSPIELS

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HISTORY OF THE **SCHIEDMAYER COMPANY**





Schiedmayer

KEYBOARD INSTRUMENT MANUFACTURING SINCE 1735 -CELESTA MANUFACTURING SINCE 1890

For nearly 300 years the Schiedmayer family has been active in the production of keyboard instruments. Already in 1735 Balthasar Schiedmayer built his first clavichord in Erlangen. In 1809, his grandson, Johann Lorenz Schiedmayer, together with Carl Dieudonné, founded the Schiedmayer company in Stuttgart. The art of piano, harmonium and celesta manufacturing has been passed down from generation to generation.

The celesta was invented in Paris in 1886 by Victor Mustel. By 1890, the Schiedmayer firm was already manufacturing this new instrument. Schiedmayer continually improved and further developed the celesta, and since 1980 specialized entirely in their manufacture. The Mustel company discontinued the manufacturing of celestas in 1975 and Schiedmayer remains the sole worldwide producer of the instrument since.



All Schiedmayer instruments are 100% MADE IN GERMANY, we only use wood types from local forestry. We do not use any material or components originating from endangered animal or plant species.

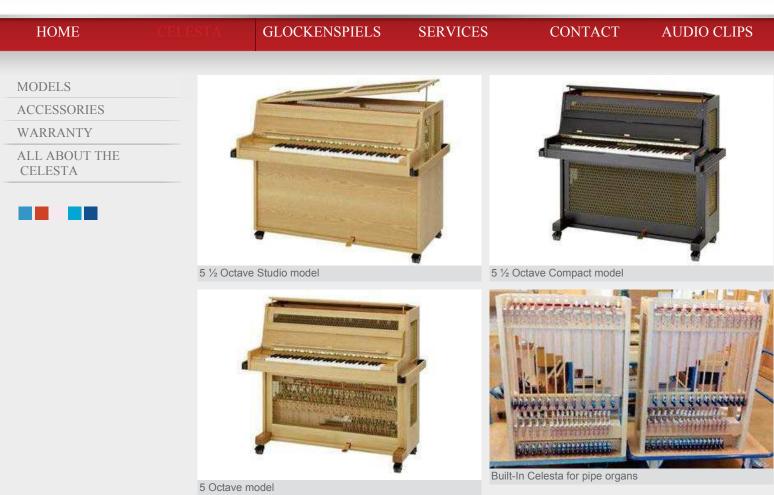
Today, here is hardly an orchestra, music academy, theater or broadcast studio in whisch you cannot hear a Schiedmayer celesta. The instruments are used in chamber music ensembles, pop, rock and jazz bands, and film music.

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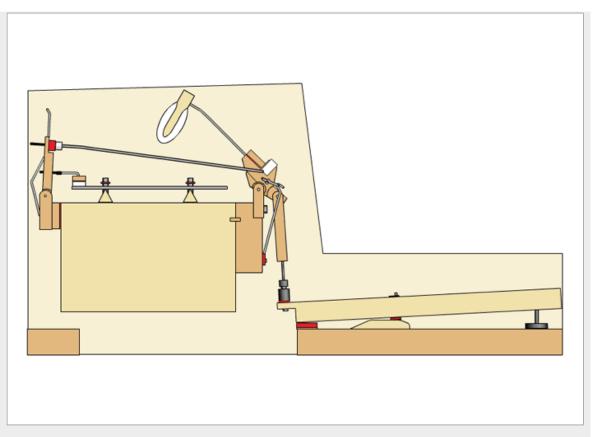


Celesta manufactory since 1890



A NEW DESIGN AS OF 2014: ALL MODELS ARE EQUIPPED WITH HINGED LIDS THAT PARTIALLY OPEN TO PRODUCE OPTIMAL SOUND PROJECTION.

THE CELESTA ACTION



The felt hammer is set in motion by pressing the key and strikes the sound plate from above. The sound plate is placed above a wooden resonator.

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KEYBOARD GLOCKENSPIEL

BUILT-IN GLOCKENSPIEL



Keyboard Glockenspiel "Papageno"





TECHNICAL DETAILS AND SPECIAL FEATURES

The Papageno model equipped with brass spheres charms with its magical carillon sound.

Standard tuning: 442 Hz. Other tunings available by request without extra charge.

Cabinet: natural oak or black satin finish.

Three-year warranty.

Recommended Accessories

Flight case/protective cover

Upon request we will arrange shipping and delivery worldwide.

Dimensions and weight

Keyboard Glockenspiel c2 – g5Width85 cmHeight96 cmDepth59 cmWeight62 kg

Prices

natural oak EUR 19.900,00

black satin finish EUR 20.390,00

- Prices ex works
- Without value-added tax
- Without packaging
- Without customs duties (if applicable)
- Prices subject to change

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KEYBOARD **GLOCKENSPIEL**

BUILT-IN GLOCKENSPIEL



Built-in Glockenspiel (for organ)







TECHNICAL DETAILS AND SPECIAL FEATURES

- · Solid oak framework
- Triple-tier arrangement of the metal plates and wooden resonators. Other spatial arrangement possible on client's request.
- Tuning: according to client's request.
- Electromagnetic action (24 V magnets).

Three-year warranty

References:

- · Vleugels organ: "St. Kilian Church" Julius-Hospital, Würzburg
- Hermann-Eule organ: "Mercator Hall", Duisburg

Dimensions and weight

Range: c2 - d5

Width 82 cm Height 85 cm Depth 33 cm Weight 70 kg

Price

EUR 17.900,00 (Standard version)

• Price ex works, without

Klais organ: "Neumünster Church", Würzburg
 "Cathedral Würzburg"
 "Holy Cross Monastery Church", Aschaffenburg

- Kuhn organ: privately owned, Zürich
- Mühleisen organ: "Holy Cross Monastery Church", Stuttgart
- Albiez organ: "Cathedral St. Eberhard", Stuttgart
- Reichel organ: China Congregational Church, Hong Kong

keyboard

- Without V.A.T.
- Without packing
- Without customs duties (if applicable)
- Price subject to change

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Celesta manufactory

GLOCKENSPIELS HOME SERVICES CONTACT **AUDIO CLIPS**

MODELS

ACCESSORIES

WARRANTY

ALL ABOUT THE CELESTA

INVENTION

PATENT

SOUND GENERATION

BREAKTHROUGH

REPERTOIRE

TECHNICAL IMPROVEMENTS

SERVICE AND **MAINTENANCE**



The musical instrument Celesta

There is a lot of misleading and in some cases wrong information on the musical instrument Celesta, on its origins, and particularly on its sound-generating action circulating. Even otherwise reliable standard reference books get many of the facts wrong.

Here are the most important things to know about the Celesta:

- The Celesta was invented and patented in Paris by Victor Mustel in the year 1886.
- In his patent Victor Mustel also determines the name Celesta he specifically created for this new instrument.
- The Celesta's unique sound is generated by its very specific action: By pressing the key a felt hammer is set in motion. The felt hammer strikes a sound plate from above. A wooden resonator is placed under each
- Victor Mustel therefore emphasizes in his patent that the Celesta action is completely distinct from an upright-piano action (hammers strike the vertically aligned strings from the side) or a grand-piano action (hammers strike the horizontally aligned strings from below).

More details on this and many other interesting facts about the Celesta you will find under the menu options to the left.

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MODELS

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WARRANTY

ALL ABOUT THE CELESTA

INVENTION

PATENT

SOUND GENERATION

BREAKTHROUGH

REPERTOIRE

TECHNICAL IMPROVEMENTS

SERVICE AND MAINTENANCE

Sound generation - the Celesta action

Schiedmayer is today worldwide the only manufacturer of the Celesta as invented and patented by Victor Mustel.

Only Schiedmayer uses the Celesta action developed by Victor Mustel and specified in his patent:

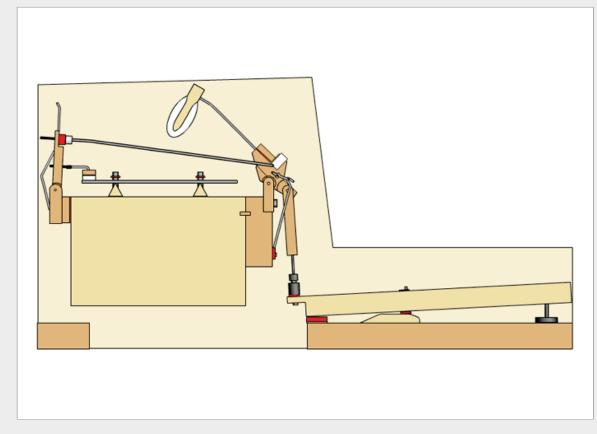
- The felt hammer is set in motion by pressing the key.
- The felt hammer strikes the steel sound plate from above.
- The sound plate is placed above a wooden resonator.

It is this unique action mechanism that generates the typical, overtone-rich Celesta sound.

There are keyboard glockenspiels made by other manufacturers using a piano action (sound plates are struck vertically/from the side) or a grand-piano action (sound plates are struck from below). So it is very misleading to call these instruments a celesta which unfortunately happens.

Schiedmayer does use a full-size grand-piano keybed but not a grand-piano action.

THE CELESTA ACTION



The felt hammer is set in motion by pressing the key and strikes the sound plate from above. The sound

plate is placed above a wooden resonator.

RESONATORS

Made from specially seasoned beechwood, the resonators are the main sound carriers in the celesta, and responsible for the remarkable staying power of the sound.



SOUND PLATES

The steel sound plates are worked to precise standards in order to produce the inimitable Celesta sound of our instruments.

Our instruments are tuned to a standard pitch of 442 Hz unless otherwise required.



Sound Dioton

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THE PANELISTS



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pi-an-o 1 (pe-an ō, pyan ō)



n.pl. pi-an-os

A musical instrument with a manual keyboard actuating hammers that strike wire strings, producing sounds that may be softened or sustained by means of pedals.

[Italian, short forpianoforte; see PIANOFORTE.]





(click for a larger image) piano1

top: upright piano bottom: grand piano





(click for a larger image) piano1

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pi-a-no² (pē-ä nō, pyä -) Music

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adv. & adj. Abbr. p

In a soft or quiet tone. Used chiefly as a direction.

n. pl. pi-a-nos

A passage to be played softly or quietly.

[Italian, from Late Latin plānus, smooth, graceful, from Latin, flat; see pelo-2 in the Appendix of Indo-European roots.]

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ce-les-ta (sə-lĕs tə) also ce-leste (-lĕst)



A musical instrument with a keyboard and metal plates struck by hammers that produce bell-like tones.

[French célesta, from céleste, celestial, from Latin caelestis; see CELESTIAL.]

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